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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,039	02/20/2002	Jack J. Richards	4244P2431	9546
23504	7590	10/07/2003	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/082,039	Applicant(s) RICHARDS, JACK J.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18, 19, 22, and 29 are rejected under 35 USC 102(b) as being anticipated by US Re. 34,816 issued to Poettgen.

Claim 18 is drawn to a blackout and thermal drapery comprising (a) a metallized film, (b) a first fabric coupled to one side of said film, and (c) a second fabric coupled to the other side of said film. Claim 19 limits the metal to being aluminum. Claim 22 limits the film to polypropylene.

Claim 29 is drawn to a method of making a blackout and thermal drapery comprising (a) providing a film, (b) metallizing both sides of said film, (c) providing a first fabric, (d) coupling said first fabric to one side of said metallized film, (e) providing a second fabric, and (f) coupling said second fabric to the other side of said metallized film.

Poettgen discloses a lightweight reflective drape comprising an aluminum layer vacuum deposited onto a first thermoplastic film layer, a second thermoplastic layer on the opposite of said metal, and outer layers of nonwoven fabric (col. 5, lines 7-34). The thermoplastic film may be polypropylene (col. 5, line 35-40). The nonwoven fabric layer is preferably absorbent (col. 5, lines 53-60). In a preferred embodiment the second thermoplastic film layer is omitted and the

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fabric is coupled to the aluminum layer (col. 6, lines 3-6). Thus, claims 18, 19, 22, and 29 are anticipated by the Poettgen reference.

3. Claims 18, 22, and 29 are rejected under 35 USC 102(b) as being anticipated by US 3,718,528 issued to Bergstrom.

Bergstrom discloses a radiation filter laminate comprising a plastic film that is coated with a thin metallic layer and reinforced with a textile fabric on either one or both sides thereof (col. 1, lines 62-65). The plastic film may be a polyolefin film (i.e., polypropylene or polyethylene) (col. 1 line 66-col. 2, line 11). The fabric is may be a nonwoven fabric (col. 2, lines 59-64). Thus, claims 18, 22, and 29 are anticipated by the Bergstrom disclosure.

Claim Rejections - 35 USC § 102/103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 20 is rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being unpatentable over the cited Poettgen reference.

Claim 20 limits the aluminum to having an optical rating of 1.5-4.0.

Poettgen is silent with respect to the claimed optical rating of the aluminum layer.

However, it is reasonable to presume that said rating is inherent to the invention of Poettgen since the optical rating is a property inherent to the aluminum. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed optical rating

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would have obviously been present once the Poettgen invention is provided. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claim 20 is rejected.

Claim Rejections - 35 USC § 103

6. Claim 21 is rejected under 35 USC 103(a) as being unpatentable over the cited Poettgen reference.

Claim 21 limits the metal to having a thickness of 0.0002-0.03 mm.

Poettgen teaches the metal layer to be about 300 Angstroms (0.00003 mm). However, it would have been obvious to one of ordinary skill in the art to modify the disclosed thickness of the aluminum. Motivation to do so would be to improve the heat retaining properties by increasing the thickness. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Therefore, claim 21 is rejected as being obvious over the cited prior art.

7. Claims 19-21 are rejected under 35 USC 103(a) as being unpatentable over the cited Bergstrom reference.

Bergstrom does not explicitly teach aluminum, and its optical rating, as the preferred metal. However, it would have been obvious to one skilled in the art to employ aluminum since it has been held that selection of any known material suitable for the intended use is obvious to one skilled in the art. *In re Leshin*, 125 USPQ 416.

With respect to claim 21, it would have been obvious to one skilled in the art to employ the claimed thickness since where the general conditions of the claim are disclosed in the prior

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art, finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, claims 19-21 are rejected as being obvious over the cited prior art.

8. Claims 11, 13-17, and 27 are rejected under 35 USC 103(a) as being unpatentable over WO 83/00356 issued to Ryan et al. in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al.

Applicant claims a blackout and thermal drapery comprising (a) a metallized film, (b) a fabric coupled to one side of said film, and (c) a layer of acrylic latex coupled to the other side of said film. Claim 13 limits the acrylic latex to being flame retardant. Claim 14 limits the metal to being aluminum. Claim 15 limits the aluminum to having an optical rating of 1.5-4.0. Claim 16 limits the metal to having a thickness of 0.0002-0.03 mm. Claim 17 limits the film to polypropylene.

Claim 27 is drawn to a method of making a blackout and thermal drapery comprising (a) providing a film, (b) metallizing both sides of said film, (c) providing a fabric, (d) coupling said fabric to one side of said metallized film, (e) coating a layer of acrylic latex onto the other side of said metallized film.

Ryan discloses an insulation material comprising a substrate having a first layer of a metallic material thereon and a second layer overlying said metallic material (abstract). The substrate may be a woven or nonwoven fabric (bottom of page 3), while the metallic layer may be a laminate comprising a metallized film (page 4, lines 1-5). Said metal may be aluminum (page 4, lines 5-6). The second layer may be a clear, dyed, or pigmented lacquer, but is preferably a pigmented polyamide coating (page 6, last paragraph). The second layer function for aesthetic purposes in covering up the metallic layer, maintains an infrared transmitting gap on

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the face of the metal surface, and protects said metallic layer from the environment (page 2, last paragraph and page 7, 1st paragraph). The inventive insulation material is suited for use as a window covering, such as a curtain or blind (page 8, line 2 and 12-16).

Thus, Ryan teaches the presently claimed invention with the exception of the acrylic latex layer. Pigmented acrylic latexes are well known in the art of insulating curtains and blinds. For example, DeMott teaches known blackout fabrics for curtains comprise a fabric substrate coated with a titanium dioxide pigmented latex and a carbon black pigmented latex (col. 1, lines 31-42). Similarly, Leaderman teaches known blackout drapes comprise a fabric substrate coated with one or more layers of an acrylic latex, such as an opaque carbon black acrylic coating thereon (col. 1, lines 19-42). Thus, it would have been obvious to one skilled in the art to employ a pigmented acrylic latex coating rather than the pigmented polyamide coating since said acrylic coatings are known in the art as suitable materials for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 11, 14, and 27 are rejected as being obvious over the cited prior art.

With respect to claim 13, Leaderman also teaches said acrylic latex may include a fire retardant material (col. 1, lines 31-34). Hence, said claim is rejected over the cited prior art as being obvious.

With respect to claim 15, it is argued that the claimed optical rating is met by Ryan's teaching of aluminum since said optical rating is an property inherent to the metal itself. Thus, claim 15 is rejected along with claim 14.

Ryan fails to teach the metallic layer thickness or that the film is polypropylene. However, with regard to the thickness, it is argued that this feature is a result effective variable. An increase in thickness would increase thermal insulation properties, weight, and stiffness of

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the fabric laminate, while decreasing said thickness would decrease these properties. It has been held that discovering an optimum value of a result effective variable involves only routing skill in the art. *In re Boesch*, 205 USPQ 215. Thus, claim 16 is rejected.

With regard to the film being polypropylene, it would have been obvious to one skilled in the art to substitute polypropylene film for the polyester film disclosed by Ryan. Note *In re Leshin*, 125 USPQ 416. Therefore, claim 17 is also rejected over the cited prior art.

9. Claims 1, 4-9, and 23 are rejected under 35 USC 103(a) as being unpatentable over US 4,790,591 issued to Miller in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al.

Applicant claims a blackout and thermal drapery comprising (a) a metallized film, (b) a first acrylic latex layer coated onto one side of said film, and (c) a second layer of acrylic latex coated onto the other side of said film. Claims 4 and 5 limit the acrylic latex layers to being flame retardant. Claim 6 limits the metal to being aluminum. Claim 7 limits the aluminum to having an optical rating of 1.5-4.0. Claim 8 limits the metal to having a thickness of 0.0002-0.03 mm. Claim 9 limits the film to polypropylene.

Claim 23 is drawn to a method of making a blackout and thermal drapery comprising (a) providing a film, (b) metallizing both sides of said film, (c) coating a first layer of acrylic latex to one side of the metallized film, and (d) coating a second layer of acrylic latex onto the other side of said metallized film.

Miller discloses a light and heat shielding windshield cover comprising a flexible, light-impervious, metallized plastic film (col. 1, lines 7-12 and col. 2, lines 52-66). The thickness of the metallized film ranges from 12-15 microns (0.012-0.015 mm) (col. 5, lines 26-31). Said

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metallized film may be made from a polypropylene film (col. 5, lines 31-35). Additionally, the metallized film may be coated on one or both sides with a polymeric coating, such as polyethylene, polyester, polycarbonate, or nylon, in order to protect said metal from abrasion and wear (col. 5, lines 50-57 and col. 6, lines 36-39). The metal for the metallized layer may be any metal or metal compound which can be deposited on the polymeric film (col. 6, lines 32-36).

Thus, Miller teaches the claimed invention with the exception that the polymeric coating is an acrylic latex coating. However, as noted above, said acrylic latex coatings are well known in the art of blackout curtains. Note the teachings of DeMott and Leaderman. Thus, it would have been obvious to one of ordinary skill in the art to substitute the polymeric coating of Miller with the known acrylic latex, in particular an acrylic which is fire retardant, in order to protect the metallized film and to enhance the light-shielding properties of the curtain. Note *In re Leshin*, 125 USPQ 416. Therefore, claims 1, 4, 5, 8, and 9 are rejected.

Additionally, it would have been obvious to employ aluminum as the metal for the metallized film, since aluminum is well-known in the art as being capable of coating a film. Note *In re Leshin*. Hence, claims 6 and 7 are rejected.

10. Claim 12 and 28 are rejected under 35 USC 103(a) as being unpatentable over the cited Ryan, DeMott, and Leaderman as applied to claim 11 above, and in further view of US 4,560,245 issued to Sarver.

Claims 2, 3, 24, and 25 are rejected under 35 USC 103(a) as being unpatentable over the cited Miller, DeMott, and Leaderman as applied to claim 1 above, and in further view of US 4,560,245 issued to Sarver.

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Claims 2 and 3 limit the first and second acrylic layers of claim 1 to being flocked, while claims 24 and 25 limit the method of claim 23 to further include the step of flocking the first and second acrylic layers. Claim 12 limits the acrylic layer of claim 11 to being flocked, while claim 28 limits the method of claim 27 to further include the step of flocking the acrylic layer.

Ryan, Miller, DeMott, and Leaderman do not teach a layer of flocked fibers on the acrylic latex layer. However, said flocking is known in the art. For example, Sarver teaches a vehicular windshield curtain comprising a light impervious sheet and a reflective outer surface (col. 2, lines 30-43). A layer of flocked fibers may be present on either the inner or outer layers of the curtain (col. 3, lines 2-10 and col. 6, lines 1-4). Thus, it would have been obvious to one skilled in the art to employ a flocked layer on the exterior of the invention disclosed by the combination of Ryan, DeMott, and Leaderman or the combination of Miller, DeMott, and Leaderman in order to provide an esthetically pleasing and soft surface. Therefore, claims 2, 3, 12, 24, 25, and 28 are rejected as being obvious over the cited prior art.

Conclusion


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
September 28, 2003